THE

12.

SOUTH BEND

FUGITIVE SLAVE CASE,

INVOLVING THE

RIGHT TO A WRIT OF HABEAS CORPUS.

NEW YORK:

FOR SALE AT THE ANTI-SLAVERY OFFICE,

48 BEEKMAN STREET.

1851.

THE SOUTH BEND FUGITIVE SLAVE CASE.

At the request of many friends of the slave, the writer has been induced to lay before the public in this form, the facts in relation to an important suit, prosecuted by John Norris, of Boone County, Kentucky, against Leander B. Newton and others, citizens of South Bend, Indiana, in the U. S. Circuit Court at Indianapolis, hoping that it may be the means of advancing the cause of truth and justice, and showing the extent to which the federal courts are willing to go in sustaining slavery.

The following is a brief statement of the facts, as proved at the trial. Norris, the plaintiff, resides on the south bank of the Ohio River, about one mile and a half below the town of Lawrenceburgh, which is in Indiana. He claimed to own as slaves a family, consisting of David Powell, his wife Lucy, and their four children, Lewis, Samuel, George, and James. He permitted the family to cultivate a piece of ground and sell the produce where they pleased, and David and the boys were often seen in Lawrenceburgh selling their produce, and on one occasion when there was a show or circus in Lawrenceburgh, Norris was seen there, accompanied by David, Lucy and Lewis.

During the night of Saturday the 9th day of October, 1847, David and his family disappeared from Kentucky. The alarm was given next morning, Sunday, and about forty persons started in pursuit. Norris, and a party in his employ, hunted through Southern Indiana for about two months without success, though they found articles of clothing belonging to the fugitives at several different places. In September, 1849, Norris started with a party of eight men, and about midnight of the 27th of that month, they forcibly broke into a house, about eight miles from Cassopolis, in Cass County, Michigan, occupied by Mr. Powell's family. The house was in the woods about half a mile from any other dwelling. Mr. Powell and his son Samuel were absent from home at the time. Norris and his party drew their pistols and bowie knives, and compelled the mother and her three children to rise from their beds and follow them. Some they bound with cords, and hurrying them off to their covered wagons, they started post haste for Kentucky, leaving

a portion of their company at the house to prevent the other inmates from giving the alarm. Lewis, the oldest son, had but recently been married, and was forcibly separated from his wife by the brutal gang. After awhile the alarm was given, and pursuit commenced; a neighbor, Mr. Wright Maudlin, overtook them about noon, near South Bend, Indiana, about thirty miles from where they had started. This was on Friday, the 28th of September. Mr. Maudlin immediately applied to E. B. Crocker, Esq., an attorney in South Bend, stated what he knew of the circumstances, that he had no doubt the family were free, that he had known them for some time as quiet and industrious persons, and never heard any intimation that they were slaves. They had purchased a small tract of land, on which they resided at the time of their abduction, and were laboring hard to pay for it.

A petition for a writ of *habeas corpus* was drawn up, and signed, and sworn to, by Mr. Maudlin, setting forth that Mrs. Powell and Lewis Powell (as Mr. Maudlin did not then know with certainty how many of the family had been taken) were deprived of their liberty, by some person whose name was unknown, under pretense that they were fugitive slaves, averring that he verily believed they were free persons. On this petition, the Hon. Elisha Egbert, Probate Judge of St. Joseph County, who is authorized by a special statute to issue and try writs of *habeas corpus*, ordered that writ to issue. It was issued accordingly by the clerk, and placed in the hands of Russell Day, deputy-sheriff, for service. Mr. Day, learning that the Kentuckians were armed, called upon several citizens to accompany him in serving the writ. In the mean time the report having spread abroad that a party of kidnappers with their captives were in the vicinity, the whole town was aroused, and the people in a high state of excitement, were running about, anxiously inquiring into the matter. The deputy-sheriff with his company, overtook the Kentuckians about one mile south of the town, where they had stopped in the bushes to feed their horses. They were all well armed, making quite a display of their weapons, and evincing at first a disposition to resist all legal proceedings. The writ was served by reading, and after considerable parley, in which they were made to understand most distinctly that they could not proceed without a fair trial of their claims, they at last consented to go back to town and proceed to trial on the writ. By this time about thirty or forty persons had arrived from town, two of whom brought guns, but no attempt to use them was made. A Mr. Frazier, with a gun in his hand, was met by Mr. Crocker, and told by him to put

up his weapon, as it was no place for such things. Some of the citizens carried walking canes, but no force was used towards the Kentuckians, though the people were in a high state of excitement. Norris and his party at last drove back to town with their captives, followed by the sheriff and the people. In the mean time, a new writ of *habeas corpus* had been procured, directed to Mr. Norris, whose name had been ascertained, for all four of the captives, which was served upon him as soon as he arrived in town, the first writ having been dismissed. At the request of Norris, the deputy-sheriff placed the captives in jail, until he could procure counsel. In a short time he procured the services of Messrs. Liston and Stanfield, two of the ablest lawyers in Northern Indiana, to conduct his defense. Messrs. Deavitt and Crocker appeared on behalf of the captives. Norris and his counsel appeared before the Judge, who held his Court in the Court House, and asked for time to enable them to prepare their defense, which was readily granted. After about an hour or more, they again appeared, and made a return to the last writ of *habeas corpus*, sworn to by Mr. Norris. The following is a copy of the return, and answer thereto, by the captives :—

"I, John Norris, the person to whom the within writ is directed, do hereby return the same, as commanded with the within-named persons in my custody, that I am a resident of Boone County, Kentucky, that the within-named persons are my slaves according to the laws of Kentucky, and are my property according to the laws of said State, that I have a just claim to the services of the within-named persons, agreeably to the laws of said State, and that said persons named in the within writ, sometime in the month of October, 1847, absconded and fled from my service in said State, and fled and took refuge in the State of Michigan, where I found them on the 27th instant, and then and there arrested them as fugitives from labor, and took them into my custody, and I am now on my journey proceeding to Boone County, in the State of Kentucky, with the within-named persons as my own slaves and property, as such fugitives from labor.

"JOHN NORRIS."

"And the said persons, detained in custody by said Norris, say, that the matters set forth in the foregoing return are not sufficient in law to authorize said Norris to restrain them in their liberty.

"CROCKER & DEAVITT, Attorneys, &c."

The following is a copy of the clause in the Constitution and the law of 1793, in relation to fugitives from labor:

"No person held to service or labor in one State, under the laws thereof escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim, of the party to whom such service or labor may be due."

"Be it further enacted, that when a person held to labor in any of the United States, or in either of the territories north-west or south of the river Ohio, under the laws thereof, shall escape into any other of said States or territory, the person to whom such labor or service may be due, his agent, or attorney, is hereby empowered to seize or arrest such fugitive

from labor and to take him or her before any judge of the Circuit or District Courts of the United States, *residing or being within the State*, or before any magistrate of a county, city, or town corporate, *wherein such seizure or arrest shall be made*, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested doth, under the laws of the State or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent, or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or territory from which he or she fled."

It appearing from the return of Norris, that he had not procured the certificate required by the act of Congress, the counsel for the captives, therefore, "excepted to the sufficiency of the return," as provided by the statute, distinctly stating to the judge that if this exception should be overruled, they should then take issue upon the facts alleged in the return, and require Norris to prove all the facts therein. It will be noticed that the act of Congress is imperative in requiring the claimant to take the fugitives before some judge or magistrate of the State or county, "*wherein such seizure or arrest shall be made*," to procure the certificate.

The exception was ably argued on both sides until night, the counsel for the captives insisting that the law of '93 was the only remedy provided by Congress to recover fugitives from labor; that a claimant must strictly pursue its provisions to enable him to enforce his rights; that, although by this law, he had the right to seize or arrest, in the first instance, in the State where he might find the fugitive, yet, to enable him to hold his captive in another State, he must first procure a certificate in the State where the arrest was made, as provided by the law. The statute was plain in its provisions, and there was no misunderstanding it. On the other hand, it was contended that a claimant had a right to arrest any person whom he might claim as his slave, wherever he could find him, take him wherever he pleased, without any proof, certificate, warrant or process whatever, and if any one interfered or questioned the claim, they did it at their peril. No authority whatever was introduced to sustain this position, and the judge, after a full and candid hearing, sustained the exception, and ordered the captives to be discharged.

The court-house was crowded with an anxious audience, listening to the argument and decision. Everything had been conducted with order and propriety, and no one, we presume, anticipated the scene which followed the announcement of the decision. The judge spoke in a very low tone of voice, so that

but few could hear him. As soon, however, as he concluded, Mr. Crocker announced the decision in a loud tone of voice, that all could hear. Norris, in the mean time, had gathered his men around the captives, as they were seated within the bar, and the moment the decision was announced, they seized the captives with one hand, brandished their weapons with the other, threatening to shoot the first man that interfered. This was while the judge was still sitting on the bench, and before any adjournment had been announced. Everything had been perfectly quiet up to this moment, but upon this display of force, the people rose to their feet highly excited. Some ran out and spread the alarm through town, others crowded around the Kentuckians and their captives, calling upon them to put up their weapons; but they continued brandishing them, threatening to shoot all who dared to oppose them. Mr. Liston, one of their counsel, jumped upon a table, and called upon the Kentuckians to shoot all who interfered, and they would be justified in so doing. His language was most violent and abusive towards the citizens, and did much to fan the excitement. The citizens were entirely unarmed, and notwithstanding the excitement, no attempt was made to rescue the captives by force. At length, the Kentuckians put up their weapons, the excitement subsided, and, at the request of Norris, the sheriff took the captives and locked them up in jail for safe keeping.

It was now discovered, that while the trial was pending, Norris had procured a writ under a law of the *State of Indiana* respecting fugitives from labor, under which he claimed to hold them, and he alleged that he was but serving this writ when he drew his weapons upon the people.

This was on Friday evening. During the evening, and the next day, several warrants were issued against the Kentuckians for assaults and batteries, and one for a riot, predicated upon their violent proceedings in the court-house. The whole of Saturday was occupied in trying these cases, and in the riot case they voluntarily gave bail to appear at the Circuit Court, which commenced its session the next Monday. Two suits were also commenced by the Powells against Norris and his party for trespass and false imprisonment, and they were held to bail in the sum of $1000 in each suit. One of their counsel entered himself as bail for them. On Saturday evening, the captives having been all this time in the custody of the sheriff in jail, where Norris had placed them, another writ of *habeas corpus* was procured, returnable before the same judge at eight o'clock on Monday morning.

In the neighborhood from whence these captives were taken,

there is a large settlement of colored people, numbering, it is supposed, from 1,200 to 1,500 persons, many of whom are fugitives. As soon as it was known that Mr. Powell's wife and children had been carried off, several large parties, many of whom were armed, started in pursuit, but it was not until Saturday that they learned the direction taken. During Saturday and Sunday, numbers of these colored persons, estimated at from 75 to 200 persons, arrived in South Bend, many of them in a highly exasperated state, though they conducted themselves with great coolness and propriety under the circumstances.

On Saturday, a citizen of Michigan made affidavit before a justice of the peace in South Bend, that Norris and his party had been guilty of kidnapping in Michigan, and had fled from that State to Indiana. On this affidavit, a writ for their arrest issued under a law of Indiana, which provides that, upon sufficient proof, a fugitive from justice may be committed to jail for one month, to await a requisition from the governor of the State from whence he fled. This writ was placed in the hands of a constable, but was never served.

On Sunday morning Norris had a consultation with his attorneys, at which it was concluded that it would be useless to attempt to take his captives out of the county, in the face of so many armed negroes; that they would abandon all legal proceedings, and endeavor to make their friends of the captives liable in damages for their value. Mr. Crocker, having been most active in befriending the negroes, was to be entrapped into some violation of the law, if possible. To carry out this scheme, on Sunday morning, they sent for the sheriff, and formally demanded the negroes of him, though they well knew that he had been served with a writ of *habeas corpus*, and that he would render himself liable to a fine of $1000 should he fail to obey the writ. He, of course, declined. They then requested him to take witnesses and call upon Mr. Crocker, and get him to agree to become responsible for not delivering them. He accordingly did so, but Mr. C. replied that he was acting as attorney, should do his duty fearlessly as such attorney, and should assume no other responsibility; that if he, the sheriff, refused to obey the writ of *habeas corpus*, the law should be enforced against him. This did not suit the conspirators.

During Sunday, Mr. Liston called several times upon the constable, who had the writ to arrest Norris and his party, as fugitives from justice, and requested him to serve it, but he replied, that his orders were not to serve it, unless they attempted to leave the town. It would seem that their object was to have Norris and his party arrested, and then offer that as an excuse

for not appearing at the trial of the *habeas corpus*, on Monday morning; but, in this, they were foiled, as they were at perfect liberty from Saturday night until they left town, several days after, and could have appeared at the trial had they seen proper.

During Saturday and Sunday, Mr. Norris seemed very anxious to persuade the people that he was a kind and indulgent master, in order to create a favorable public opinion. In several different conversations, he stated that he gave his negroes ground to cultivate for themselves, and many other privileges, that he permitted them to go to Lawrenceburgh, in Indiana, whenever they pleased, to sell their garden stuff, *and that they had taken advantage of this liberty to run away.*

Early Monday morning, Mr. Liston stated to Mr. Crocker, that Norris was very anxious to prove, on the coming trial, that the negroes were his property, to satisfy the citizens. As the case stood, he could not *legally* introduce such testimony, for he claimed to hold them by a writ issued under a *State law*, which the U. S. Supreme Court had decided to be unconstitutional and void. The sheriff would be compelled, in his return, to set up this writ, as his authority for holding them in custody, and an exception to the sufficiency of the return would raise the question, under which no evidence could be offered. The object of the request seems to have been to obtain a refusal to admit the testimony before the issue was made up, and then adduce that as evidence of an unwillingness to grant a fair trial. But, in this, they were foiled, for the request was immediately acceded to, Mr. Crocker stating that he was willing to waive all technical matters, and rest the case upon the question of freedom or slavery. This, however, did not suit their designs; for, when the trial came on, Norris refused to appear, saying that he did not want the negroes, that he could make the citizens pay for them, which was all he wanted.

The sheriff, in his return to the writ of *habeas corpus*, stated that he held the captives in custody, as the agent of Norris, under the State writ, which was set forth in full. A replication to this return was filed, sworn to by Lewis Powell, excepting to the sufficiency of the return, and alleging that *they were free persons, and not slaves.* One of Norris' attorneys and several of his party were present at the trial, but refused to appear for Norris. The case of Prigg vs. Pennsylvania, 16th Peters' Reports, in which the U. S. Supreme Court declare that all laws passed by the States in relation to fugitives from labor, are unconstitutional and void, was read to the court, and several witnesses examined in relation to the facts of the case. The

court, after a full and fair hearing of the cause, again ordered the captives to be discharged. The colored friends and neighbors of the captives immediately came forward, conducted them out of the court-house to a wagon, and quietly rode off home with them. On the bridge adjacent the town, they halted, and made the welkin ring with their cheers for liberty. They rode off, singing the songs of freedom, rejoicing over the fortunate escape of their friends from the horrible fate of slavery. Thus ended one of the most exciting scenes ever witnessed in Northern Indiana. The Grand Jury refused to find an indictment against the Kentuckians for a riot, and in a few days after they quietly departed for their homes, with new views of Northern feeling on the subject of slavery.

The citizens of South Bend generally, without distinction of party, evinced the strongest feeling of sympathy for the oppressed. The trials called forth crowds to hear the arguments. The presence of the poor trembling captives, in their weak and helpless condition, surrounded by a party of armed men in a court of justice, was a practical exhibition of slavery, which needed only to be seen to stir up the deepest fountain of feeling. The Kentuckians were looked upon almost universally with loathing and abhorrence. The sight of a family thus torn from a happy home, separated from those they held most dear, with nothing but slavery, hopeless, life-long bondage staring them in the face, made our citizens feel that nothing should be left undone, to save them from such a horrid fate. Never shall I forget my feelings, as I stood among them in their dark cell in prison, when that mother, with streaming eyes and heaving breast, fell on her knees, and begged me to save them from slavery. Oh! what anguish filled those hearts! Who, possessing the *heart* of a man, could resist such an appeal? For one, I could not, and whatever cold, calculating conservatism might say, I felt then, that there is a "higher law," written by the finger of God upon the hearts of men, speaking in resistless tones, "*Thus saith the Lord, execute ye judgment and righteousness,* AND DELIVER THE SPOILED OUT OF THE HAND OF THE OPPRESSOR."*

Never can I forget an interview I afterwards had with the husband and father of this family, who came to express his feelings of gratitude for my efforts in their behalf. The best of his days had been spent toiling for others living in luxury. Said he, "I once had a wife, she was taken from me and sold South, I have never seen her since, I know not whether she is dead or alive, and when the news came, that this, my second wife, was

* Jeremiah xxii. 3.

in the hands of the Kentuckians, I felt that I had nothing more to live for," and he wept like a child.

On the 21st day of December, 1849, Norris commenced suit in the United States Circuit Court, for the District of Indiana, against Leander B. Newton, George W. Horton, Edwin B. Crocker, Solomon W. Palmer, David Jodon, William Wilmington, Lot Day, Jr., Amable M. Lapiere, and Wright Maudlin, to recover the value of the negroes and other damages. Mr. Maudlin being a resident of Michigan, the suit was afterwards dismissed as to him. The declaration filed, charged the defendants with having knowingly harbored, and concealed, and aided the four negroes to escape from the plaintiff, stating them to be worth $2500. The court commenced its session on the 3d Monday in May, 1850. The plaintiff appeared by O. H. Smith and J. A. Liston, and the defendants by Joseph G. Marshall and J. L. Jernegan their attorneys. The defendants demurred to the declaration on the ground that the suit was founded on the act of Congress of February 12th, 1793, and that no reference was made to the statute in the declaration, referring to the opinion of Judge McLean, in the case of Jones vs. Vanzandt, 2 McLean's Rep. 630, where the judge says: "An exception is taken to the fourth count, that it does not conclude against the form of the statute. If an action be founded exclusively upon the statute, and cannot be maintained at common law, a reference to the statute, as showing the right of the plaintiff, it seems to me is essential. The defendant is charged with harboring the slaves of the plaintiff, who had escaped from his service in Kentucky. But the wrong charged is no legal wrong, except as it is made so by statute; and the fourth count does not refer to the statute. The statute is a public one, but it is the foundation, and the only foundation, of the plaintiff's right. It seems to me, that the declaration must refer to the statute, as an essential part of the plaintiff's right," citing 1 Chitty's Pleading 246, 1 Gallison 257 and 261, 1 Saunders 135 n. This decision, made by one of the judges of the U. S. Supreme Court, was precisely in point to sustain the demurrers. If the demurrers had been sustained, the plaintiff would have been compelled to amend his declaration, which would have continued the case to the next term, at his costs, amounting to about $1000. No contradictory decision was introduced by the plaintiff, but it would not do to treat a Kentucky slaveholder in this way, so the demurrers were most unceremoniously overruled, by Judge Huntington, who was officiating at this time. The defendants thus had a foretaste of how easily law could be overruled to suit a case, and what they might expect at the hands of the court.

The defendants then filed their pleas, one the general issue, and six special pleas, in which the proceedings under the writs of *habeas corpus* were set up as a defense to the action, thus raising the great question as to the right of alleged fugitives from labor, to the writ of *habeas corpus*. The plaintiff moved to reject these special pleas, and as the question was an important one, the argument was deferred until Judge McLean should arrive from Washington City.

In arguing the motion the counsel for the plaintiff took the bold ground that a person arrested as a fugitive slave had no right to the writ of *habeas corpus*, even though the master had made no proof of his claim, or obtained a certificate under the act of Congress; and that all who assisted in procuring, with the officer that served, and the judge that tried the writ, were trespassers and liable to the plaintiff in damages. On the other hand it was contended that it was a sacred writ, secured by the express terms of the Constitution of the United States, and of the State of Indiana, and the laws of the land, and that *all persons*, without distinction, were entitled to its benefits. Judge McLean decided the motion, without expressing his opinion upon these points, upon a mere technical objection, that the pleas amounted to the general issue, and he therefore rejected them.

The Democratic Governor of Indiana, out of a superabundant courtesy, and an overflowing desire to bolster up the Union, which many seemed to think was tottering and falling into ruin, had invited the Whig Governor, Crittenden, of Kentucky, to pay him a friendly official visit; and a great Union Mass Meeting had been appointed at Indianapolis for the occasion, to be held during the session of court. In due time, while this suit was pending, Governor Crittenden made his appearance, attended by some of the most distinguished lawyers and citizens of Kentucky. The Court was adjourned over to attend this great convention, over which Judge Huntington presided. Crittenden, of course, was called upon to address the meeting. This afforded him a favorable opportunity, which was not neglected, of lecturing the citizens of Indiana upon their constitutional duties to the South, one of the most important of which, he seemed to think, was this in relation to restoring fugitive slaves, which he was very sorry to say had been so often violated to the great annoyance of Kentucky slaveholders. He remarked, however, that he would give Indiana credit for one thing, which was that whenever a Kentuckian had applied to her courts to enforce the law of 1793, he had always secured his claim, and he hoped Kentucky would never have any reason to complain in this respect, otherwise it might weaken her attachment to the Union.

Other speakers followed, lauding the Union and the Constitution to the skies, enforcing the necessity of carrying out its compromises to the very letter, and denouncing abolitionists in unmeasured terms. The jurors were in attendance at this meeting, receiving these preliminary lectures upon their duties, and fully drinking in the idea, that it was all-important to sacrifice a few of these "fanatical abolitionists," for the good of this "glorious Union." We shall soon see how faithfully they carried out these instructions. We do not wish to be understood as saying that this meeting was concocted for the purpose of having a bearing upon this suit, but that it resulted in casting public odium upon the defendants and their cause, strongly prejudicing the minds of the jury against them, every one must admit who was present.

The case at last came on for trial. The jury was duly empanneled. In the preceding pages we have substantially set forth the evidence as it was given to the jury. Some may feel curious to know the value of human souls in Kentucky. Here it is, as given to the jury.—Lucy, 40 years of age, worth $500; Lewis, 20, worth $800; George, 16, worth $750; James, 14, worth $700. Plaintiff's expenses at South Bend, $165,80, and this was the amount claimed, though it was proved that the alleged fugitives were still in Cass County, Michigan, and liable to be seized by the plaintiff at any time, if he had any claim.

We now come to the charge of the judge, McLean, as published in the law journals. It is as follows, omitting the preliminary statement of facts, which we have already given more fully:

"Under the act of 1793, the master or his agent, had a right to seize his absconding slave wherever he might be found, not to take him out of the State, but to bring him before some judicial officer of the State, or of the United States, within the State, to make proof of his right to the services of the fugitive. But by the decision in the case of *Prigg* vs. *the State of Pennsylvania*, 16 Peters, the master has a right to seize his slave in any State where he may be found, if he can do so without a breach of the peace, and, without any exhibition of claim, or authority, take him back to the State from whence he absconded. Believing that this remedy was not necessary to the rights of the master, and, if practically enforced, would produce great excitement in the free States, I dissented from the opinion of the court, and stated my objections with whatever force I was able. But I am as fully bound by that decision as if I had assented to it.

"Had the State judge power to issue a writ of *habeas corpus* in this case? This writ is favored by our laws. It is secured to any person in the fundamental laws of the States and of the Union, as necessary to protect him against acts of oppression. To the people of England it is equally endeared. The people of Indiana, and the people of the other States, have declared that this writ shall not be suspended, except in time of war, or rebellion, and under the greatest emergencies.

"Every person within the sovereignty of Indiana, without regard to color or condition in life, is bound by its laws and subject to its jurisdiction; and it is immaterial whether his residence be temporary or permanent, he

owes for the time being an allegiance to the State. And the principle applies to a mere traveler through the State. He is amenable to the civil and criminal laws of the State; and the State, so long as he shall remain within it, is bound to protect him in his liberty, and in the exercise of his legal rights. In a proper case made, the judicial officers of the State cannot withhold from him the benefit of the writ of *habeas corpus*.

"In the present case, affidavits were made that the fugitives in question were free, and that they had been kidnapped by the plaintiff in the State of Michigan, with the view of making them slaves. An affidavit to this effect was made by a white person, a citizen of Michigan, and by one of the colored persons in the custody of the plaintiff.

"It is objected that a colored person, not being a competent witness in Indiana, could not make such an affidavit. I think differently. For this purpose, at least, he may be sworn. It has been so held in Virginia and some of the other slave States. The affidavits being presented to the State judge, which shows an unlawful detention and imprisonment, he is bound, under the law of the State, to issue the writ, if demanded. He knows nothing of the case, and can be presumed to know nothing of it, except what appears upon the face of the affidavits.

"There can be no higher offense against the laws of humanity and justice, or against the dignity of a State and its laws, than to arrest a free man within its protection, with the view of making him a slave. And this may often be done with impunity, if the remedy by the writ of *habeas corpus* may not be resorted to. There is no other remedy known to the law, which is so speedy and effectual.

"I have no hesitancy in saying, that the judicial officers of a State, under its own laws, in a case where an unlawful imprisonment or detention is shown by one or more affidavits, may issue a writ of *habeas corpus*, and inquire into the cause of detention. But this is a special and limited jurisdiction. If the plaintiff, in the recapture of his fugitive slaves, had proceeded under the act of Congress, and made proof of his claim before some judicial officer in Michigan, and procured the certificate which authorized him to take the fugitives to Kentucky, these facts being stated, as the cause of the detention, would have terminated this jurisdiction of the judge under the writ. Thus it would appear that the negroes were held under the federal authority, which, in this respect, is paramount to that of the State. The cause of detention being legal, and admitted or proved, no judge could arrest and reverse the remedial proceedings of the master.

"And the return made by the plaintiff, being clearly within the provisions of the Constitution, as decided in *Prigg* vs. *the State of Pennsylvania*, and the facts of that return being admitted by the counsel for the negroes, the judge could exercise no further jurisdiction in the case. His power was at an end. The fugitives were in the legal custody of their master, a custody authorized by the Constitution, and sanctioned by the Supreme Court of the Union. If the facts, on the return of the *habeas corpus*, had been denied, it would have been incumbent on the master to prove them, and that would have terminated the power of the judge. Had the legislature of Indiana provided, by express enactment, that in such a case the judge should discharge the fugitives, the act would have been void. No procedure under it could have been justified or excused. And in the case under consideration, the custody of the master being admitted to be under an authority paramount to that of the State, the discharge of the fugitives by the judge was void, and, consequently, can give no protection to those who acted under it.

"No judge of the United States can release any one from a custody under the authority of the State. Some years since, an individual was indicted in the Circuit Court of the United States for the first circuit, if I mistake not, for a capital offense. The defendant was ascertained to be imprisoned for

debt under State process; and the lamented Mr. Justice Story very properly held that he had no power to release him from that custody by *habeas corpus*. The authority of the plaintiff to arrest and hold in custody his slaves, under the decision in the case of Prigg, was as unquestionable as could be that of an officer acting under judicial process. If the master in his return to the *habeas corpus*, or in his proof, the return being denied, should fail to show his right to the services of the fugitives, the State judge would have the power to discharge them from his custody. Such a discharge would *not be conclusive* on the rights of the master. He might again arrest the fugitives, and by additional evidence establish his right to their services. This would be consistent with the dignity of a State, and enable it to give protection to all who are within its jurisdiction and are entitled to its protection, while, at the same time, it could not impair the rights of the master. It imposes on him no hardship. When he undertakes to recapture his slaves, under the highest authority known to the country, he must be prepared to show, if legally required to do so, that he is exercising a rightful remedy. This remedy being by the mere act of the party, and without any exhibition of claim or judicial sanction, must be subject to the police power of the State, at least so far as to protect the innocent from outrage.

"The legal custody of the fugitives by the master being admitted, as stated in the return on the *habeas corpus*, every step taken subsequently was against law and in violation of his rights. I deem it unnecessary to inquire into the procedure subsequently. It was wholly without authority. *The forms of law assumed, afford no protection to any one.* The slaves were taken from the legal custody of their master, and he, thereby, lost their services.

"It is argued that the plaintiff abandoned his right to the fugitives by failing to appear to the writ on Monday. Of what value could such an appearance have been to him? His right was admitted in the fullest and broadest terms, as set forth in the return to the second writ. And this being held insufficient by the judge, of what avail could his proof have been? A mistake of the law cannot, in such a case, prejudice the rights of the plaintiff.

"Crocker acted as counsel. So far as his acts were limited to the duties of counsel he is not responsible. But if he exceeded the proper limits of a counselor at law, he is responsible for his acts the same as any other individual. *Every person of the large crowd in the court-house, or out of it, who aided, by words or actions, the movement which resulted in the escape of the fugitives, is responsible.* On such an occasion, liability is not incurred where no other solicitude is shown by words or actions, than to obtain an impartial trial for the fugitives.

"But it is earnestly contended that the slaves were entitled to their freedom from the privilege given them by the plaintiff to visit Lawrenceburgh in Indiana, on their own business, to sell articles of produce, and at other times were sent there on the business of the plaintiff.

"It appears that the plaintiff was an indulgent master; that he gave to David, the husband of Lucy, and father of the boys, a piece of ground to cultivate in vegetables for their own use and profit. David was seen by several witnesses at Lawrenceburgh at different times selling vegetables; but there is no express evidence that the plaintiff sent him, or consented that he should cross the river. At one time he was seen at Lawrenceburgh, and the plaintiff was also seen in the village at the same time, so that an inference may be drawn that David was there with the consent of his master. At another time David was seen at Lawrenceburgh, and the oldest boy, Lewis; a yellow woman was also seen with them, who, the witness supposes, though he is not certain, may have been Lucy, the wife of David.

"Several witnesses state the confessions of the plaintiff, at South Bend, that he had been very indulgent to the fugitives, in permitting them to sell

their vegetables on the Indiana side of the river. Some of these confessions are disproved by persons who were present, and who give an entirely different construction to the words of the plaintiff. Instead of saying that he had permitted them to attend the market at Lawrenceburgh, he said he had permitted them to attend market at a village on the Kentucky side, and that he did not know that David might not have crossed the river to find a better market. The conflicting statement of witnesses will be examined and weighed carefully by the jury. Before the interests of the master can be affected by the slave being seen in a free state, it must be clearly shown that he was in such a state with the consent of his master. But neither the acts nor the value of the services of David are involved in this case. He has not been arrested by the plaintiff.

"It is insisted that, if the slaves had been permitted to go to the state of Indiana by the plaintiff, and afterward returned voluntarily to their master, they could not set up the fact as a ground of their release. The courts of the slave states are divided on this question. It is now pending in a case before the Supreme Court, brought from Kentucky. Under such circumstances if the jury shall find from the evidence that the fugitives named in the declaration, or any part of them, had, with the consent of the plaintiff, been in Indiana, and had returned to the service of their master, they will so find the fact, and the question will be duly considered on a motion after verdict. There is no pretense to say, when the slaves left the service of the plaintiff, they left with his consent. The facts show clearly that they absconded.

"The court are asked to instruct you that as the fugitives are still liable to be recaptured by the plaintiff, he cannot recover their value in damages. Whether the plaintiff shall be able to recapture the slaves, if his right to do so be admitted, is subject to many contingencies which cannot well be estimated by a jury. There is certainly no obligation on the plaintiff to use further exertions to reclaim the fugitives; and it would seem to be unjust that those, through whose instrumentality their services have become lost to the plaintiff, if the jury shall so find, should avail themselves of such a defense. In such a case, the act of Congress of 1793 gives an action to the plaintiff for the damages received. The damages, in the present case, are estimated by two witnesses, one of whom states them at $2,450, and the other at $2,700, making a difference between the two estimates of $250. The plaintiff's counsel claim interest on the damages estimated from the time the negroes absconded. The court will give no instructions on the question of interest, but will say to the jury, if they shall find for the plaintiff, they will assess such damages, as on a full consideration of the evidence, they shall believe he has sustained.

"I was gratified at the avowal of one of the counsel in the defense, that he disclaimed all influence with the jury, except that which arose from the facts and law of the case. And he particularly repudiated that argument which invoked the conscience of the jury against the established law. This was a manly avowal, and fit to be made in this place, and on this occasion.

"No earthly power has a right to interpose between a man's conscience and his maker. He has a right, an inalienable and absolute right, to worship God according to the dictates of his own consience. For this he alone must answer, and he is entirely free from all human restraint to think and act for himself. But this is not the case when his acts affect the rights of others. Society has a claim upon all its citizens. General rules have been adopted in the form of laws, for the protection of the rights of persons and things. These laws lie at the foundation of the social compact, and their observance is essential to the maintenance of civilization. In these matters, the laws, and not conscience, constitute the rule of action. You are sworn

decide this case according to the law and testimony. And you become unfaithful to the solemn injunctions you have taken upon yourselves, when you yield to an influence which you call conscience, that places you above the law and the testimony. Such a rule can apply only to individuals; and, when assumed as a basis of action on the rights of others, it is utterly destructive of all law. What may be deemed a conscientious act by one individual may be held criminal by another. In the view of one, the act is meritorious; in view of the other, it should be punished as a crime. And each has the same right, acting under the dictates of his conscience, to carry out his own view. This would overturn the basis of society.

"We must stand by the law. We have sworn to maintain it. It is expected that the free states should be opposed to slavery. But with the abstract principles of slavery we have nothing to do. As a political question there could be no difference of opinion among us on the subject. But our duty is found in the Constitution of the Union, as construed by the Supreme Court. The fugitives from labor we are bound, by the highest obligations, to deliver up on claim of the master being made; and there is no state power which can release the slave from the legal custody of his master.

"The chief glory and excellence of our institutions consist in the supremacy of the laws. We are instructed to reverence and obey them from our earliest years. And it is this, connected with a faithful administration of the laws, which has given security to persons and property, throughout the wide extent of our country. In this consists, in a great degree, the strength of our government. And we should be careful not to weaken its power. There is enough in the general aspect of our affairs, if not to alarm, at least to admonish us, that every cord which binds us together should be strengthened.

"In regard to the arrest of fugitives from labor, the law does not impose active duties on our citizens generally. They are not prohibited from exercising the ordinary charities of life toward the fugitive. To secrete him, or to convey him from the reach of his master, or to rescue him when in legal custody, is forbidden, and for doing this a liability is incurred. This gives to no one a just ground of complaint. He has only to refrain from an express violation of the laws, which operates to the injury of his neighbor. Is this a hardship? No law-abiding man can so consider it. He cannot claim a right to do that which the law forbids, without striking at the basis of society. If the law be unwise or impolitic, let it be changed in the mode presented; but so long as it remains the law, every good citizen will conform to it. And every one who arrays himself against it, and endeavors by open or secret means to bring it into contempt, so that it may be violated with impunity, is an enemy to the best interests of his country.

"Gentlemen, the case is with you. In your deliberations you will carefully weigh the evidence, and in coming to a determination, you will be guided only by the evidence and the law."

The jury brought in a verdict against the defendants, and assessed the damages at $2,856. The defendants moved for a new trial, and in arrest of judgment, which were overruled by the court, and time given to file a bill of exceptions, which was afterwards done.

It will be seen that the whole case was made by Judge McLean to turn upon the question of *jurisdiction*. And the points by which he decided it, were raised by himself, never contended for by the plaintiff's counsel, and never considered in the argument of the case. In Indiana, the probate court is a court of

record, and by special statute, the probate judge of St. Joseph County has general jurisdiction, with as full and ample powers as the judges of the Supreme and Circuit Courts, to issue and try writs of *habeas corpus* in *all* cases where a "person is unlawfully restrained of his liberty, under any pretense whatever." It is well settled that the State courts may exercise jurisdiction in all cases authorized by the laws of the State where they are not prohibited by an *exclusive* jurisdiction in the federal courts, 6 Halsted, 370; 2 Hill, 159. There is no act of Congress conferring upon the federal courts *exclusive* jurisdiction in cases of this kind. It is also well settled, that a discharge upon *habeas corpus*, or a judgment or order by a judge or court having jurisdiction, is a *conclusive defense*, although rendered for an insufficient cause, or founded on an irregular proceeding, 1 Vermont Rep. 405; or though it be obtained by fraud, or be erroneous, 5 Hill N. Y. Rep. 568; and no person can be held liable as a trespasser for enforcing the same, 2 Johnson Rep. 437; 11 Ibid, 158; 12 Ibid, 25; 2 Blackford, 306.

When a court has jurisdiction, it has a right to decide any question which occurs in the cause; and, whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every other court, 1 Peters U. S. Rep. 340; and neither the United States Supreme Court, nor any other, can, in a collateral way, review the proceedings, or take notice of any irregularities, or error in the decision, 3 Dallas U. S. Rep. 54, 3 Barbour, 37; and there can be no judicial inspection behind the record, 2 Howard U. S. Rep. 319.

Jurisdiction of courts of record is presumed, and where the want of jurisdiction does not appear upon the face of the record, the defendant must file a plea to the jurisdiction, otherwise he waives the objection, and after a plea in bar, it is too late to object to the jurisdiction, 3 Johnson, 105; 1 Denio, 91; 3 Hayward, 44; and where a party has some privilege which exempts him from the jurisdiction, he may waive it, and does so by pleading in bar, 4 McCord, 79; 4 Mass. 593; Peters C. C. Rep. 489. As in this case, the defendant appeared before the probate judge, and made no objection, by plea or otherwise, to the jurisdiction of the judge. So it has been decided that the question of jurisdiction depends upon the character of the suit, and the *defense* which may exist has no influence in settling the jurisdiction, 12 Smedes & Marshall, 640; and where a court has jurisdiction, no subsequent fact arising in the case can defeat it, 1 Scammon, 137.

State courts have exercised jurisdiction in analogous cases, and in 12 New Hampshire Rep. 194, it was expressly decided,

that a return to a writ of *habeas corpus*, issued by a State court, setting forth that the petitioner was held as a soldier, under enlistment in the army of the United States, did not oust the court of its jurisdiction; but it is bound to inquire whether the petitioner is lawfully held under the laws of the United States; and if not, he is entitled to his discharge. In 11 Mass. 63, 67 and 83, the court makes similar decisions. These decisions conflict directly in principle with that of Judge McLean, for certainly the soldiers "*were held under the federal authority*," and if this federal authority "is paramount to that of the State," in one case, why not in the other? In 7 Barr Pennsylvania Rep. 336, it was decided that in such cases, that of soldiers, the State and federal courts have *concurrent* jurisdiction, which is undoubtedly the true rule of law upon this subject.

From the foregoing legal decisions, it will be seen how important it was to find some way to oust the probate judge of "jurisdiction," and yet, in form at least, preserve the "favored writ" of *habeas corpus*, for it would never do to openly deny or trample upon it. The judge accomplished this difficult undertaking to perfection, though his decision is substantially a denial of this great writ of freedom; for no man can feel safe, under this decision, in procuring the writ from a State court, and it is next to impossible, in most cases, to procure it in time from a United States judge.

He lays great stress upon the "facts of the return being admitted by the counsel for the negroes," in excepting to the return. Every lawyer knows that an issue of fact overrules an issue of law; that the only way to raise the question of the right of a master to remove an alleged fugitive out of a State without a certificate, was by excepting to the return; that this admits the facts, *for the purpose of the argument only*. And yet how eagerly the judge seizes upon this mere technical admission, though it was in evidence that the counsel distinctly stated that if the exception was overruled, he should deny the allegation that they were fugitive slaves. And who ever before heard that third persons, who knew nothing of the pleadings, or of the admissions or denials therein, are to be held liable in heavy damages—to be utterly ruined, upon a mere legal technicality of this kind? We hesitate not to say, that such a decision has no foundation in law or common sense.

But the judge proceeds to say, "If the facts, on the return of the *habeas corpus*, had been denied, it would have been incumbent on the master to prove them, *and that would have terminated the power of the judge*." If this be the law, it follows, of course, that the moment the claimant makes out a *prima*

facie case, "the power of the judge has terminated," and it would, of course, be his duty to *immediately* dismiss the proceedings, for any further action would be beyond his "jurisdiction," and of course, *void.* And this follows, even though the alleged fugitives have full proof present of their freedom, or that the claimant's witnesses are mistaken, perjured, or unworthy of credit—no matter how perfect a defense they may have, the judge cannot hear, for his "power has terminated." Such are some of the inevitable conclusions flowing from this dictum of the judge.

He further says: "I deem it unnecessary to inquire into the proceedings subsequently [to the first discharge]. It was wholly without authority. *The forms of law assumed, afford no protection to any one.* The slaves were *taken* from the legal custody of their master, and he thereby lost their services." Now, the *facts* are, that the captives remained in the "legal custody" of Norris, and his agent, the sheriff, from the time he first arrested them in Cass county, until they were discharged on *Monday* morning. It is not contended by the plaintiff, that this second discharge was illegal or erroneous; so that the judge found it necessary to fix the liability of the defendants, on the occurrences of Friday evening, when, as the judge asserts, the discharge was erroneous. Now, we defy any one to show that the captives were ever "*taken* from the legal custody" of Norris, until Monday morning, when they were *legally* discharged, as it was fully conceded, by the order of the judge. Again, we are told, "the *forms of law* assumed, afford no *protection* to any one." Here, we are given to understand, that the great writ of *habeas corpus* is but a mere "form of law," and that it "affords no protection to any one." If this be the law, there is no one safe in attempting to secure a fair trial to alleged fugitives, for the writ of *habeas corpus* is the only efficacious remedy provided by the law, and if that is to afford "no protection," then are all the powers of law prostrate before the *mere claim* of a slaveholder. Never has there been a decision rendered in this country, which so completely subverts all law, and breaks down every defense raised by the people to secure their liberties.

It will be recollected that the plaintiff totally abandoned his claim on Monday morning. This was a strong point against him; but the judge disposes of it very summarily, saying, "of what avail could his proof have been?" As well might the same question be asked in any case. If he had proven his case, he would have evinced a desire to rest his claim upon the law; but the truth is, he was *not prepared to prove his claim at the*

time, and he preferred to carry his case before a court, where the Slave Power could bring all its forces to bear.

The slaveholders deemed it important in this case, to involve the attorney, who was most active in prosecuting the writs of *habeas corpus*, in personal liability, as a means of deterring members of the legal profession from taking an active part in future cases. The judge accomplished this object very neatly. His charge is correct, as a legal proposition; but he should have gone further, and informed the jury what "acts" were within the "duties of counsel," and what were not. As an impartial judge, he ought not to have thrown this important question in this loose way, before the jury. Very few men understand clearly the precise line of the "duties of counsel," and it was the duty of the court to have plainly pointed them out; and without any such definite instructions, it is not strange that the jury should fail to discriminate.

"Every person of the large crowd in the court-house, or out of it, who aided, by words or actions, the movement which resulted in the escape of the fugitives, is responsible." This clearly fixes the offense as having occurred on Friday evening. The defendants were charged with "harboring and concealing" the fugitives; and we defy any man to show that they did any act that could, by any stretch of the fancy, be construed into "harboring and concealing" persons who remained all the time in the custody of Norris and his agents. Yet it is in this way that the judge persuaded the jury, that Mr. A., present in an excited crowd on Friday evening, was liable for an alleged "escape" which took place on Monday morning, when he was not present. It was only by such absurd propositions, that the defendants could be made liable.

The judge labors hard in his charge, to do away the force of the testimony in relation to the question of freedom, arising from the captives having been in a free State, with the consent of Norris. In speaking of the confessions of Norris, he says, "some of these confessions are disproved by persons who were present, and who give an entirely different construction to the words of the plaintiff." This is not a correct statement of the evidence. Only *one* of the confessions, and there were six in all, was attempted to be disproved; and in that, there were two witnesses on the part of the defendants, to one for the plaintiff. The fairness of the judge can be deduced from this. But he further says, "before the interest of the master" (a precious regard for the *interest of the master*, and none for the poor captives,) "can be affected by the slave being seen in a free State, it must be clearly shown that it was with the consent of

the master." And what clearer evidence could be produced, than the voluntary admissions of the plaintiff, proved by seven unimpeachable witnesses to the fact?

The court were asked to instruct the jury that if the plaintiff permitted his slaves to come into a free State, while there they were free persons; and that the mere fact that such free persons afterwards went into a slave State, could not make them slaves, any more than other free persons going voluntarily from a free to a slave State; but he refused to give the instruction, saying the decisions were conflicting, and asked the jury to return a special verdict on the point. In this way the jury were left to infer that that it was a question that had very little bearing on the case, and they accordingly paid no further attention to it.

The judge indulges in an eloquent homily upon the subject of "Conscience and the Constitution," quite a favorite topic of his, by the way. What it had to do with the present case, cannot be easily seen, except to prejudice the jury against the defendants, by leading them to suppose that they were ready to trample upon the laws and the Constitution from conscientious motives. The defendants rested their case upon purely legal grounds, and they were not so foolish as to appeal to "conscience" or the "divine law," in *that court*, or before *that jury*.

He says, "the law, and *not conscience*, constitutes the rule of action." We have no doubt that "conscience" has very little to do with the conduct of a great many men; but it is seldom we see such a labored effort to drive "conscience" from the jury box; an effort too entirely gratuitous on the part of the judge, and unnecessary with the jury to whom it was addressed. In our simplicity we had always supposed that the *motive* had something to do in determining the character of an act, but this good old rule has fallen before the progressive spirit of slaveholding principles. "Our *duty* is found in the Constitution of the Union, as *construed* by the Supreme Court." It seems, then, that our rule of "duty" is not to be found in the Constitution alone, but we must wade through about fifty volumes of the reported decisions of the Supreme Court, to ascertain it. There we find, in construing this very fugitive clause, that Judge S. understands the Constitution to mean one thing—Judge T. directly to the contrary—while Judge B. and others think that S. and T. are both mistaken—hardly two judges exactly agreeing what the rule of "duty" is. And yet, we are gravely told, that it is the "construction" of such men, a majority of whom are personally *interested* in the question, that is to bind down the consciences, the heads, the hearts, and the hands of the free men

of America. Who will consent to wear such a chain? The Constitution is a plain instrument—as plain and as easily understood as the decisions of the Supreme Court. Free, intelligent men can understand it, and need not the sophistries of slaveholders to teach them its meaning; and spite of all *such* decisions, will *think* for themselves, and *act* out their convictions. But let us see to what absurd conclusions this doctrine will lead us. Judges are fallible men, and courts often overrule their own decisions. Quite a large volume has been published, containing nothing but "overruled cases." The Supreme Court may construe the Constitution one way to-day, and to-morrow directly the contrary, and thus this precious rule of "duty" may be ever changing. Why, in this very case of *Prigg* vs. *Pennsylvania*, the ablest lawyers differ as to what the court decided; and it seems that the judges themselves, in private conversation with Henry Clay and others, have avowed that their decision was directly contrary to what it reads in the report.

In the case of Judge McLean, we see how this false idea of "duty" has imposed chains upon a giant intellect. In a masterly and most conclusive argument in the Prigg case, he dissented from the opinion of the majority of the judges. He held that the claimant had no right to remove the fugitive from the State where he arrested him, without a certificate under the act of 1793; and this opinion will yet be the law of the land, as it is evidently the only correct view of the law. Judge McLean has sworn to support the Constitution, and yet under the influence of this false idea of "duty," he does not hesitate to violate his own convictions of right and justice, and to inflict heavy penalties on persons, who, according to his own construction of the Constitution, have not violated the law.

"There is enough in the general aspect of our affairs, if not to alarm, at least to admonish us, that every cord which binds us together should be strengthened." Here we have evidence of the feelings which were operating against the defendants. When the judge came upon the bench to try this case, he had just left Washington City, where he had been listening to disunion threats all winter. With all the nervousness of a presidential aspirant, he, no doubt, felt sincerely desirous that the *Union* should be held together, *at any sacrifice;* and it is not strange, therefore, that, in his charge to a jury, where the claims of a slaveholder were in litigation, in which too, the argus eye of the Slave Power was upon him, he should so far forget himself, as to bring the *political agitations* of the country to bear upon a jury, who were called upon to decide a simple question of damages between private citizens. Woe to our country,

when the rights of our citizens, in courts of justice, are to be decided by *appeals to political prejudice;* when a judge shall so far forget the dignity of his station, and the obligation of his judicial oath, as to attempt to "strengthen the cords which bind us together," by sacrificing the rights of parties, who ask justice at his hands. We hope the country breathes freer, that the Union is more firmly cemented, now that a few anti-slavery men have been sacrificed to appease the sordid appetite of a Kentucky slaveholder.

We have now reviewed the charge of the judge, and leave it to the reader to decide how far the rights of freemen are secure in courts, where presidential aspirants sit as judges.

Between the spring and fall terms of the Circuit Court, the plaintiff commenced twelve suits, against fifteen defendants, to recover in each suit the penalty of *five hundred dollars* under the act of 1793. The counsel for the plaintiff gave it out that they intended to commence about twenty-five additional suits, for the penalty: and if successful in them all, they would have recovered judgments to the amount of about $15,000 to $20,000. On the 18th day of September, 1850, the new fugitive law was passed by Congress, punishing the same offenses by fine, not exceeding $1,000, and imprisonment, not exceeding six months. At the November term, 1850, the defendants appeared and filed demurrers to the declarations.

Jernegan and Niles, for defendants, insisted on the following points in support of the demurrer. 1st. The act respecting fugitives from labor, adopted September 18, 1850, inflicts a greater punishment than the law of 1793, for the same offenses.

2d. A new statute, imposing a new penalty, repeals the prior law by implication—citing 4 Burrows, 2026; 5 Pick., 168; 21 Pick., 373; 9 New Hampshire, 59; 2 Dana, 330, 344.

2d. Such repeal puts an end to all suits, whether pending at the time, or commenced after the passage of the new law, unless there be a saving clause, which there is not in the law of 1850—citing 3 Burrows, 1456; 5 Cranch, 280; 4 Yeates, 392; 5 Randolph, 657; 1 Wash. C. C., 85; 4 Alabama, 487; 3 Howard, 534; 16 Peters, 362; 18 Maine, 109; 26 Maine, 452; 1 New Hampshire, 61.

O. H. Smith for plaintiff insisted on the following in reply:

1st. The act of 1850 applies only to offenses occurring after its passage.

2d. The penalties of the latter act are *cumulative.* Adding new penalties by law will not operate as a repeal of a prior law, unless there is a repealing clause, which there is not in this

case—citing 1 Cowper, 297; 9 Bacon's Abridgment, Bouvier's Edition, 226.

3d. The plaintiff had a *vested right* to the penalty of $500, which the act of Congress has not taken away.

4th. The act of 1850 is an "amendment and supplementary" to the act of 1793, by its express terms.

J. A. Liston, for plaintiff, insisted that the two acts were not inconsistent with or repugnant to each other; that they merely adopt different *modes* of recovering fugitives, imposing different penalties on those who violate the provisions of either; that a claimant can *now* pursue the remedy prescribed by the act of 1793, and if a person interfere with him in violation of that law, he can recover the penalty of $500; but if he should elect to proceed under the law of 1850, a person violating that law would be punished by fine and imprisonment.

The question was fully argued, occupying two entire days, and the court took the matter under advisement, until the spring term—and at the May term, 1851, the court decided in favor of the defendants, but as the plaintiff was desirous of having the points decided by the United States Supreme Court, the court, *pro forma*, certified to a difference of opinion, which is the only way the question can be carried up to the Supreme Court. The defendants will thus be obliged to follow the case up to the United States Supreme Court, where the matter is now pending.

We have endeavored in the foregoing pages to give a faithful and candid statement of the facts relating to one of the most important fugitive trials which ever occupied a court. It forms part of the history of the great anti-slavery movement now agitating our country; an agitation which has penetrated our legislative halls, religious assemblies, political meetings, and courts of justice. No public or private assembly has been able to effectually exclude this exciting topic. It has taken a powerful hold upon the hearts and minds of American freemen. The contest is raging round us; and probably in no place will the great questions of human rights be more fiercely contested than in our courts of law. The federal courts will yet be the scene of the great battle between liberty and slavery; and although from present appearances, freedom has little to hope for there, yet we have an abiding confidence, that the time will come, when some American Mansfield will take his seat upon the Supreme Bench of the Union, and, disregarding the time-serving decisions, promulgated under the fear of the *Slave Power*, rising in the majesty of truth and justice, proclaim the great

principle, that every human being, treading American soil, is FREE AND CAN NEVER BE MADE A SLAVE.

The struggle may be longer and more fiercely contested, than in the days of the English Mansfield; but with a firm assurance that that time *will come*, the friends of liberty must be content to bear the burdens imposed upon them, remembering that it is for the purpose of "*strengthening the cords which bind this Union together.*" Let the time speed on, when "LIBERTY SHALL BE PROCLAIMED THROUGHOUT THIS LAND, UNTO ALL THE INHABITANTS THEREOF."